



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of

Vladimir Markovich Kozenkov et al.

Application No.: 09/853,648

Filed: May 14, 2001

For: PHOTO-INDUCED DICHROIC
POLARIZERS AND FABRICATION
METHODS THEREOF

) **MAIL STOP AF**

) Group Art Unit: 1756

) Examiner: JOHN A MCPHERSON

) Confirmation No.: 6482

REQUEST FOR RECONSIDERATION

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Confirming the undersigned's telephone conversation with the Examiner,
Applicants respectfully request reconsideration of the refusal to enter the Declaration
filed November 14, 2005.

The Advisory Action dated December 6, 2005, states that the Declaration filed
pursuant to 37 C.F.R. §1.132 will be not be entered on the grounds that there was no
showing of reasons why the affidavit is necessary and was not earlier presented.
The Advisory Action specifically refers to M.P.E.P. §716.01, regarding the timeliness
of affidavits under 37 C.F.R. §1.132.

The referenced portion of the M.P.E.P. states:

Affidavits and declarations submitted under 37 C.F.R. §1.132
and other evidence traversing rejections are considered timely if
submitted:

...

(3) after final rejection and submitted

(i) with a first reply after final rejection for the purpose of
overcoming a new ground of rejection or requirement made in the final
rejection...

In the present case, the Declaration Under 37 C.F.R. §1.132 was submitted to overcome rejections of claims 13, 15, 19 and 20 on the basis of the Kozenkov et al. publication. These claims had not been previously rejected on the basis of that publication. Specifically, in the first Office Action dated December 6, 2002, claims 13 and 15 were rejected on the basis of JP 56-036612 and U.S. Patent No. 5,024,850. In the next Office Action dated July 16, 2003, claims 1, 3-5 and 9-12 were rejected on the basis of the Kozenkov publication. However, claims 13 and 15 were allowed. In the next Office Action dated November 17, 2004, claims 1-12 were allowed, and claims 13 and 15 were rejected on the basis of U.S. Patent No. 5,286,418. In the final Office Action dated July 13, 2005, the previous rejection of claims 13 and 15 was withdrawn, and the claims were rejected on the basis of the Kozenkov publication for the first time.

Accordingly, it is respectfully submitted that the rejection of claims 13 and 15 (as well as new claims 19 and 20) on the basis of the Kozenkov publication constitutes a new ground of rejection. Even though other claims in the application had been previously rejected on the basis of that reference, claims 13 and 15 had not been rejected on that basis. There was no need for Applicants to submit a Declaration Under 37 C.F.R. §1.132 in response to those earlier rejections, as the grounds of rejection were overcome on a substantive basis.

Since claims 13 and 15 were rejected on the basis of the Kozenkov et al publication for the first time in the final Office Action dated July 13, 2005, it is respectfully submitted that Applicants are entitled to entry and consideration of the Declaration Under 37 C.F.R. §1.132 as being timely submitted, pursuant to M.P.E.P. §716.01.

Respectfully submitted,

BUCHANAN INGERSOLL PC

Date: December 12, 2005

By: 

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